

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DEWEY CHAD JOHNSTON, )  
                            )  
                            )  
Movant,                 )  
                            )  
                            )  
v.                         )                  No. 1:17CV2 HEA  
                            )  
                            )  
UNITED STATES OF AMERIC, )  
                            )  
                            )  
Respondent.             )

**OPINION, MEMORANDUM AND ORDER**

Before the Court is movant's motion to vacate, brought pursuant to 28 U.S.C. § 2255. In his motion to vacate, movant seeks a reduction in his sentence pursuant to the recent Supreme Court case of *Johnson v. United States*, 135 S.Ct. 2551 (2015).

In *Johnson*, the Supreme Court of the United States held the "residual clause" of the Armed Career Criminal Act ("the ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), unconstitutionally vague. As movant was convicted under the ACCA and as it appears from the motion to vacate that he is relying on *Johnson* as the basis for his arguments for resentencing, this Court will request assistance from the United States Probation Office for the Eastern District of Missouri in reviewing movant's § 2255 petition.

Accordingly,

**IT IS HEREBY ORDERED** that the Clerk of Court is directed to forward a copy of movant's § 2255 motion to the Office of the Public Defender for the Eastern District of Missouri, Cape Girardeau Office.

**IT IS FURTHER ORDERED** that the Office of the Public Defender **shall have thirty (30) days to file an amended motion to vacate** in this action if it deems one to be necessary to movant's arguments.

**IT IS FURTHER ORDERED** that after thirty (30) days from the date of this Order (after any amended motion to vacate is filed), and within a reasonable time, the United States Probation Office shall prepare and file in movant's criminal case a new Resentence Report relative to movant's contentions under *Johnson*, which shall be filed under seal, with access to the Court and the parties who have entered their appearance in this matter.

**IT IS FURTHER ORDERED** that within fourteen (14) days of the filing of the Probation Office's Disclosure Copy of the Resentence Report, the parties shall file, in movant's criminal case, simultaneous objections to the Resentence Report or statements that they have no objection. Within seven (7) days of such time, the United States Probation Office shall file a final copy of the Resentence Report in movant's criminal case.

**IT IS FURTHER ORDERED** that within fourteen (14) days of the filing of the Final Resentence Report by the Probation Office in the criminal case, the Government shall file its response to movant's motion to vacate in this case.

**IT IS FURTHER ORDERED** that any reply to the Government's response to the motion to vacate shall be filed, in this case, no later than fourteen (14) days from the date the response is filed.

Dated this 10th day of January, 2017.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE